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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMERICAN HOME ASSURANCE COMPANY,)	Case No. EDCV 08-762-VAP (OPx)
)	
Plaintiff,)	[Motion filed on October 16, 2008]
)	
v.)	
)	ORDER GRANTING MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS
DONALDSON COMPANY, INC.,)	
DIGITAL DYNAMICS, INC.;)	
and DOES 1 through 50,)	
)	
Defendants.)	

The Court has received and considered all documents filed in support of, and in opposition to Defendant Donaldson's Motion for Partial Judgment on the Pleadings. For the foregoing reasons, the Court GRANTS the Motion.

I. BACKGROUND

Plaintiff American Home Assurance Company filed a Complaint in the Superior Court of San Bernardino County on August 15, 2007, naming as Defendants Donaldson Company, Inc. and Digital Dynamics, Inc. (See Compl.) The Complaint contains three claims, each arising out of

1 an explosion at a sterilization plant in Ontario,
2 California: strict liability; negligence; and, breach of
3 implied warranties. (Id.)

4
5 Defendants removed the case from state court to the
6 District Court on June 6, 2008 on the basis of diversity
7 jurisdiction. See 28 U.S.C. § 1332. Defendants filed a
8 conformed copy of their Answers on June 6, 2008.

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10 On October 16, 2008, Defendant Donaldson filed a
11 Motion for Partial Judgment on the Pleadings ("Motion").
12 Plaintiff filed an Opposition ("Opp'n") on October 27,
13 2008.

14 15 **II. LEGAL STANDARD**

16 A motion for judgment on the pleadings is a vehicle
17 for summary adjudication, but the standard is like that
18 of a motion to dismiss. Hishon v. King & Spalding, 467
19 U.S. 69, 73 (1984); Dworkin v. Hustler Magazine, Inc.,
20 867 F.2d 1188, 1192 (9th Cir. 1989). It is "functionally
21 identical" to a motion to dismiss for failure to state a
22 claim; the only significant difference is that a 12(c)
23 motion is properly brought "after the pleadings are
24 closed - but early enough not to delay trial." Fed. R.
25 Civ. P. 12(c); Dworkin, 867 F.2d at 1192; see William W.
26 Schwarzer, A. Wallace Tashima & James M. Wagstaffe,
27 Federal Civil Procedure Before Trial § 9:319-323.

1 The Court may grant judgment on the pleadings "when,
2 taking all allegations in the pleading as true, the
3 moving party is entitled to judgment as a matter of law."
4 McGann v. Ernst & Young, 102 F.3d 390, 392 (9th Cir.
5 1996); Baker v. Citibank (S.D.) N.A., 13 F. Supp. 2d
6 1037, 1044 (S.D. Cal. 1998). The court must assume the
7 truthfulness of all material facts alleged and construe
8 all inferences reasonably to be drawn from the facts in
9 favor of the responding party. General Conference Corp.
10 of Seventh-Day Adventists v. Seventh-Day Adventist
11 Congregational Church, 887 F.2d 228, 230 (9th Cir. 1989);
12 McGlinchy v. Shell Chemical Co., 845 F.2d 802, 810 (9th
13 Cir. 1988); see NL Industries, Inc. v. Kaplan, 792 F.2d
14 896, 898 (9th Cir. 1986).

15 16 **III. DISCUSSION**

17 Defendant Donaldson brings this Motion properly after
18 the "close of pleadings," as both Defendants have filed
19 their Answers to the Complaint. In its Motion, Defendant
20 Donaldson seeks partial judgment on the pleadings as to
21 Plaintiff's implied warranties claim. (See Mot.)
22 Defendant Donaldson argues Plaintiff failed to plead
23 "notice" in its implied warranties claim. (See Mot. at
24 4.) Plaintiff does not dispute Defendant's argument and,
25 in its Opposition, seeks leave to file an amended
26 complaint, attached to the Opposition and which adds
27
28

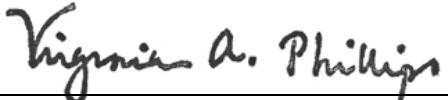
1 allegations of notice to the implied warranties claim, as
2 well as a new claim. (See Opp'n.)

3
4 Plaintiff's failure to plead "notice" dooms its
5 implied warranties claim. See, e.g., Vogel v. Thrifty
6 Drug Co., 43 Cal. 2d 184, 187 (1954). Plaintiff does not
7 oppose this Motion; its request for leave to amend its
8 Complaint, given the early stage of the litigation and
9 lack of any prejudice to Defendant, is well taken. The
10 Court has discretion to grant Plaintiff leave to amend
11 the Complaint. See Amersbach v. City of Cleveland, 598
12 F.2d 1033, 1038 (6th Cir. 1979). In the interest of
13 justice, the Court grants Plaintiff leave to amend its
14 Complaint.

15
16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court GRANTS Defendant
18 Donaldson's Motion for Partial Judgment on the Pleadings.
19 Plaintiff may file an Amended Complaint no later than
20 November 20, 2008.

21
22 Dated: October 31, 2008

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24 VIRGINIA A. PHILLIPS
25 United States District Judge
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